cases. There is much to commend the view of the Canadian court, and it is suggested that the matter requires reconsideration by the English courts."

In Max Abrahamson's book on *Engineering Law and I.C.E. Contracts* 4th Ed. at p. 271, the learned author said quite unequivocally that:

"The essential ingredient was that as retention money the money claimed was a quantified sum and was undisputably due."

To my mind, the principles discussed in the earlier part of this judgment are encapsulated in this short sentence.

In the circumstances, the order of the SAR is affirmed and this appeal brought by the garnishee is dismissed with costs.

Appeal dismissed.

Solicitors: *Nordin Torji & Yussof Ahmad; Lim Huck Aik & Co.*

PERSATUAN ALIRAN KESEDARAN NEGARA v. MINISTER OF HOME AFFAIRS

[A.C.J. (Harun J.) December 19, 1987]

[Kuala Lumpur – Civil Appeal No. 32-53-87]

Administrative Law – Certiorari and mandamus – Reform movement a registered society – Application for permit to publish magazine in Bahasa – Rejection – Absolute discretion whether subject to judicial review – Printing Presses and Publications Act 1984, ss. 6(2) & 12(2).

The applicant is a reform movement registered under the Societies Act 1966. Its aims include the publication and distribution of articles, pamphlets, journals, periodicals and books. Amongst its publications is the monthly magazine in English, the *Aliran Monthly*, whose permit has been renewed annually since 1984. On November 1986, it applied for a permit to publish a fortnightly magazine in Bahasa Malaysia to be called "Seruan Aliran". The application was rejected on April 27, 1987. The Minister took into consideration several matters in exercising his discretion under section 12(2) of the Printing Presses and Publications Act 1984. The applicant instituted the present proceedings for orders of certiorari and mandamus to be issued against the Minister.

Held: (1) the reasons given by the Minister for refusing the application were not valid. Although the discretion exercised by the Minister was absolute, it was not unfettered, and therefore the exercise of the discretion was subject to judicial review;

(2) the granting of a permit to print and publish a magazine under the 1984 Act should be made as a matter of course provided all the requirements for such a permit have been complied with. At the granting of permit stage the consideration for the Minister's discretion is limited to protecting the public interest or national interest in respect of public order, morality and security as shown in sections 4 and 7 of the 1984 Act;

(3) the discretion to refuse to grant a permit could not be exercised in anticipation that the applicant was likely to publish material which might offend against any law;

(4) in this case the Minister had no good reasons in refusing the application for a permit and accordingly the orders prayed for must be granted with costs.

[*Editorial Note:* The respondent has appealed to the Supreme Court against the decision *vide* Supreme Court Civil Appeal No. 408 of 1987.]

APPLICATION.

T. Thomas (*Ms Chua See Hua* with him) for the applicant.

K.N. Segara (Senior Federal Counsel) for the respondent.

Cur. Adv. Vult.

Harun J.: The applicant (Aliran) is a reform movement dedicated to justice, freedom and solidarity. It has been a registered society under the Societies Act 1966 since January 1977. In pursuance of its aims, Aliran, *inter alia*, is to publish and distribute articles, pamphlets, journals, periodicals and books.

On April 3, 1979, Aliran applied for a permit to publish a newspaper called "Aliran" to be published quarterly in English and Bahasa Malaysia. On January 28, 1980, a permit was granted in both languages.

On September 1983, Aliran applied for a permit to publish a monthly magazine in English called "Aliran Monthly". A permit was granted on December 27, 1983 to publish in both English and Bahasa Malaysia although the application was specifically for English only. These permits have been renewed annually since 1984.

On November 13, 1983, Aliran applied for a permit to publish a monthly magazine in Bahasa Malaysia to be called "Seruan Aliran". This application was rejected on March 17, 1984. Aliran appealed to the Yang di-Pertuan Agong under section 7(6) of the Printing Presses Act 1948 but there has been no decision on this appeal.

On November 12, 1986, Aliran applied to publish a fortnightly magazine in Bahasa Malaysia to be called "Seruan Aliran". It was rejected on April 27, 1987 and this decision of the Minister is the subject-matter of the present proceedings for certiorari and mandamus.

The Printing Presses Act 1948 was repealed and replaced by the Printing Presses and Publications Act 1984 (the 1984 Act) which came into force on September 1, 1984. The Minister, in refusing the application for a permit, said he exercised his discretion under section 12(2) of the 1984 Act and in doing so took into consideration the following matters:

"(a) The applicant is a society registered under section 7 of the Societies Act 1966;

(b) The applicant is not a political party;

(c) Part C of exhibit 'MJMA 7' and in particular paragraphs 2 and 5 thereof, that is,

'2. Isi kandongan penerbitan
and
3. Tujuan penerbitan ini diterbitkan';

(d) As at the date of my decision (April 21, 1987) the applicant had a current permit expiring on November 30, 1987 for the newspaper 'Aliran Monthly' (see exhibit 'MJMA 6A') issued pursuant to an application made on September 20, 1986 (see exhibit 'MJMA 6');

(e) Part C of exhibit 'MJMA 6' and in particular paragraphs 2 and 5 thereof, are identical to Part C paragraphs 2 and 5 of exhibit 'MJMA 7';

(f) The current permit held by the applicant for 'Aliran Monthly' does not prohibit the printing of the newspaper solely in Bahasa Malaysia;

(g) The current permit held by applicant for 'Aliran Monthly' does not restrict the size of the newspaper (that is, in terms of the number of pages or the number of articles);

(h) It was patent that the subject matters intended to be covered by 'Seruan Aliran', is currently covered by 'Aliran Monthly';

(i) Any application for a change in name from 'Aliran Monthly' to 'Seruan Aliran' could be favourably considered in respect of the current permit for 'Aliran Monthly';

(j) The intended publication of 'Seruan Aliran' was clearly not contemplated as a business venture by the applicant to compete with 'Aliran Monthly';

(k) The constitution of the applicant does not permit it to be engaged in any business ventures."

I held that the reasons given by the Minister are not valid for refusing the application on the following grounds. As to

(a): The rules and constitution of Aliran as approved by the Registrar of Societies provides by article II – Aims and Objects –

> "The aims of Aliran shall be to promote a common sense of nationhood and a genuine understanding of development in accordance with the aspirations of the Rukun Negara. In pursuance of this aim Aliran shall:
>
> (a) publish and distribute articles, pamphlets, journals, periodicals and books."

It follows that as far as the Societies Act is concerned Aliran may lawfully carry out one of its objects, *viz.* the publication and distribution of "Seruan Aliran".

(b): I am not aware of any provisions in the 1984 Act that only a political party can publish a magazine. What then of law journals, medical journals and scientific journals.

(c): The answer to 2 is –

> "Laporan, komen, dan makalah tentang hal ehwal masyarakat dengan ulasan buku, karya sastra dan sebagainya."

The answer to 3 is –

> "Memupuk perpaduan negara dan kesedaran kemajuan rakyat."

There cannot be any objection to articles on social and cultural affairs and if the objective is to promote national unity and awareness of development of the people. It will be a different matter if the proposed contents are on communism or pornography:

(d): There is no provision in the 1984 Act that a publisher is limited to one publication only.

(e): That is true but the intention of Aliran is to publish separate magazines in English and Bahasa Malaysia.

(f): That is also true but as stated in (e) the intention of Aliran is to reach separate readerships – *viz.* English and Bahasa Malaysia. There is no

provision in the 1984 Act that a publisher can only reach one language group.

(g): This ground is irrelevant – if both languages are published together the cost of printing will be higher and the reading public will only read half of the magazine in the language it prefers.

(h): That is so but the object is to reach different readership.

(i): This reason is irrelevant as the different titles are intended for separate publications.

(j): The assumption of the Minister is correct but it is an irrelevant consideration whether or not Aliran can afford to publish two publications.

(k): The statement is correct and Aliran says the intended publication of the magazine was never intended to be a business venture and is therefore an irrelevant consideration.

Finally the Minister said:

"I reiterate, that in refusing the application for a permit to print and publish 'Seruan Aliran', I had exercised my discretion in the interest of the applicant and the public at large after a careful consideration of *all information supplied by the applicant itself*, and, which discretion, I further reiterate, was exercised *bona fide* and impartially, without any prejudice or discrimination against the applicant."

Aliran's application in wanting two separate publications is clearly to reach a wider reading public. That is in the interest of Aliran and I fail to see how it could be in the interest of Aliran by not allowing two publications. If the "interest" is financial, then that is the concern of Aliran and should not be a consideration for refusing the permit. I also fail to see how the interest of the public at large is being protected by denying it access to a Bahasa Malaysia magazine particularly where the contents of the proposed magazine are already available to the English reading public.

The Minister says he exercised his discretion under section 12(2) of the 1984 Act. That subsection reads:

"The Minister shall have the absolute discretion to refuse an application for a licence or permit or the renewal thereof."

It is common ground that although the discretion is absolute it is not unfettered. It follows that the exercise of the discretion is subject to judicial review. In the instant case, Aliran has complied with all the requirements for a permit. There is no evidence that the granting of the permit asked for is against the public interest.

In my view the granting of a permit to print and publish a magazine under the 1984 Act should be made as a matter of course provided of course, if all the requirements for such a permit have been complied with. The 1984 Act is a regulating Act and generally intended to police publications available to the public by requiring a permit to print and publish so that the authorities know who the printers and publishers are and the desirability of such publications being exposed to the general public. At the granting of permit stage the consideration for the exercise of the Minister's discretion is limited to protecting the public interest or national interest in respect of public order, morality and security as is shown in sections 4 and 7 of the 1984 Act. But these considerations must be obvious from the application itself or from other information made available to the Minister. In the present case the Minister relied entirely on the information supplied by the applicant. Except in obvious cases, the discretion to refuse to grant a permit cannot be exercised in anticipation that the applicant is likely to publish material which may offend against any law. Should such undesirable material be published, then the Minister has the power to revoke the permit under section 6(2) of the 1984 Act. The printer and publisher is open to prosecution under the Official Secrets Act, the Sedition Act, the Penal Code and to suits for defamation. Both the government and the public are well protected by these laws.

On the facts of this case, I found that the Minister had no good reasons in refusing the application for a permit and accordingly granted the orders prayed for with costs.

Order accordingly.

Solicitors: *Skrine & Co.*